



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/922,233

08/03/2001

Simon Erani

4061.007

8232

49443 7590 12/23/2009
Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York, NY 10036

EXAMINER

KIM, JENNIFER M

ART UNIT

PAPER NUMBER

1628

MAIL DATE

DELIVERY MODE

12/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/922,233	Applicant(s) ERANI, SIMON	
	Examiner JENNIFER M. KIM	Art Unit 1628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed September 15, 2009 have been received and entered into the application.

Applicant's election **without traverse** of claims drawn to a method of treating human skin, comprising the steps set forth in claim 41 is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eliaz et al. (U.S. Patent No. 5,874,093) in view of Fructus et al. (WO 98/44904) of record, "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) of record.

Eliaz et al teach that a-hydroxy acid including glycolic acid in an effective amount about 0.25 wt.% to about 20wt.% enhances peeling of dead skin from the skin surfaces (exfoliation) and also aids in penetration of the oxygen into the skin which allows the skin to better regenerate (column 2, lines 44-55).

Art Unit: 1628

Eliaz et al do not teach the composition comprising 3-70% of ascorbylmethylsilanol Pectinate; the composition comprising retinyl palmitate polypeptide, Ascorbylmethylsilanol Pectinate, tocopheryl polypeptide, cholecalciferol polypeptide and niacinamide polypeptide; and the sequence of steps of application set forth in claim 41.

Fructus et al. teach a dermatological and/or cosmetic composition for treating symptoms of skin aging comprising a combination of at least one methylated silanol preferably, **ascorbylmethylsilanol pectinate** (Ascorbosilane C®, Exsymol). (abstract, page 7, lines 10-11, page 8, lines 7-8 and 10-12). Fructus et al. teach vitamin C derivative (tocopheryl acetate), vitamin A derivative (retinyl palmitate) and other components can be employed in the composition (page 12, lines 16-19, page 13, lines 1-7, Table 3, table 7).

Brooks II teaches that the protein bonded vitamins of vitamin A and C (**retinyl palmitate polypeptide** and **tocopherol polypeptide**) are useful in cosmetic for the skin because they provide safe delivery system for cosmetic vitamins. (cover page under VITAZYMES Protein Bonded Vitamins, Description of products and table on second page). Brooks II teaches that **niacinamide polypeptide** and **cholecalciferol polypeptide** are also available commercially and have advantages use in the skin care. (VITAZYME D, VITAZYME B3, second page).

It would have been obvious to one of ordinary skill in the art to employ combinations of active agents such as glycolic acid, ascorbylmethylsilanol pectinate, retinyl palmitate polypeptide, Ascorbylmethylsilanol Pectinate, tocopheryl polypeptide,

Art Unit: 1628

cholecalciferol polypeptide and niacinamide polypeptide for the improvement of appearance of the skin because all of the component are well known by the cited references for the improvement of skin care. The motivation for combining the components flows from their individually known common utility (see *In re Kerkhoven*, 205 USPQ 1069(CCPA 1980)). The employment of the agents having the same beneficial effect on skin together in the different sequence or in any different order, though perhaps a matter of great convenience does not produce a "new" or "different" function and to those skilled in the art, the use of the old elements in combination in any sequence would have been obvious. As pointed out in MPEP 2144.06 (IV) (C), selection of any order performing process steps is prima facie obvious in the absence of new or unexpected results. Also see, *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946) (selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results); *In re Gibson*, 39 F.2d 975, 5 USPQ 230 (CCPA 1930) (Selection of any order of mixing ingredients is prima facie obvious.).

Furthermore, no unobviousness is seen in the amount of Ascorbylmethylsilanol pectinate claimed because once the usefulness of a compound is known to treat a condition, it is within the skill of the artisan to determine the optimum ratio.

There is a lack of teaching in the specification that the chronological step of application set forth in claim 41 is critical.

Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

Art Unit: 1628

None of the claims are allowed.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER M. KIM whose telephone number is (571)272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brandon Fetterolf can be reached on 571-272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1628

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JENNIFER M KIM/
Primary Examiner, Art Unit 1628

Jmk
December 1, 2009